

GOVERNMENT’S SENTENCING MEMORANDUM

UNITED STATES v. BRIAN JAMES COSTA and JOHN AINERD DOUGAL
CR-11-30004-PA

TABLE OF CONTENTS

I. <u>INTRODUCTION</u>	1
II. <u>RELEVANT FACTS</u>	3
1. Defendant Costa used the internet to meet RM, a 15 year old male, enticed RM to produce and transmit sexually explicit photos, and arranged to have sex with RM in Medford on March 27, 2010, which Costa videotaped and photographed.....	3
2. Defendant Costa used the internet to arrange a second sexual encounter with RM in Medford on May 5, 2010, and persuaded RM to include defendant Dougal.....	6
3. RM’s mother called the police, who interview RM and search Costa and Dougal’s residences.....	7
a) Police search Costa’s house and seize cameras and computers.....	7
b) Search and interview of John Dougal.....	8
4. Evidence of child exploitation found on Costa’s computers.....	9
a) Videos and photos from Costa’s March 27 sexual abuse of RM and Costa and Dougal’s May 5, 2010 sexual abuse of RM	
b) Costa distributed hundreds, if not thousands, of child pornographic images via chats and e-mails.	
c) Photos of other minor victims sexually abused by both Costa and Dougal.	
5. Other child victims sexually abused by Costa and Dougal.....	11
a) Costa sexually abused 15 year old TB in 1991.....	11
b) Costa and Dougal sexually abused 9 year old DL beginning approximately 1999.....	13
c) Costa and Dougal sexually abused 15 year old MC beginning in 1998.....	16
d) Costa and Dougal sexually abused 12 year old JM beginning in 1998.....	18
e) Dougal propositioned 11 year old AN for sex in 2000.....	20
III. <u>SENTENCING GUIDELINES ANALYSIS</u>	20
1. Brian Costa- 360 to life imprisonment.....	20

2. John Dougal- 292-365 months imprisonment.....	21
3. The two-level increase for a victim under 16 years under § 2G2.1(b)(1)(B) applies to both Costa and Dougal.....	21
4. The two-level enhancement for use of a computer under §2G2.1(6)(B) applies to both Costa and Dougal.....	22
5. The five level enhancement for Pattern of Sex Abuse, 4B1.5(b) applies to both defendants.....	23
 IV. <u>VICTIM IMPACTS</u>	24
 V. <u>GOVERNMENT’S RECOMMENDATIONS</u>	
1. BRIAN JAMES COSTA - 360 months imprisonment.....	25
2. JOHN AINERD DOUGAL - 330 months imprisonment.....	30
 VI. <u>CRIMINAL FORFEITURE</u>	33

S. AMANDA MARSHALL, OSB #95347
United States Attorney
District of Oregon
DOUGLAS W. FONG, OSB #84219
Assistant United States Attorney
310 W. 6th Street
Medford, Oregon 97501
(541) 776-3564
doug.fong@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	No. CR-11-30004-PA
Plaintiff,)	
)	
vs.)	GOVERNMENT’S SENTENCING
)	MEMORANDUM
BRIAN JAMES COSTA and JOHN)	
AINERD DOUGAL,)	
)	
Defendants.)	

I. INTRODUCTION

Defendant Brian Costa pled guilty to the Indictment as follows:

Count 3: Enticing a Minor to Engage in Unlawful Sexual Activity in violation of 18 U.S.C. § 2422(b). The maximum penalty is life in prison, a \$250,000 fine, supervised release for life, and a \$100 fee assessment. There is also a 10 year mandatory minimum prison sentence. If defendant violates his supervised release, he can be returned to prison for up to life.

Count 4: Production of Child Pornography in violation of 18 U.S.C. § 2251(a). The maximum penalty is 30 years prison, a \$250,000 fine, supervised release for life, and a \$100 fee assessment. There is also a 15 year mandatory minimum prison sentence. If defendant violates his supervised release, he can be returned to prison for up to 30 years.

Count 8: Mailing Child Pornography in violation of 18 U.S.C. § 2252A(a)(1). The maximum penalty is 20 years prison, a \$250,000 fine, supervised release for life, and a \$100 fee assessment. There is also a 5 year mandatory minimum prison sentence. If defendant violates his supervised release, he can be returned to prison for up to 20 years.

Defendant John Dougal pled guilty as follows:

Count 6: Production of Child Pornography in violation of 18 U.S.C. § 2251(a). The maximum penalty is 30 years prison, a \$250,000 fine, supervised release for life, and a \$100 fee assessment. There is also a 15 year mandatory minimum prison sentence. If defendant violates his supervised release, he can be returned to prison for up to 20 years.

Defendant Brian Costa is a predatory child molester that, in addition to his present crimes, has sexually abused at least four other minor boys for over 20 years. For several years, defendant has also communicated with other child molesters, child pornographers, and minor boys, bragging about his own desires and activities in sexually molesting young boys, and encouraging others to tell him about their desires and experiences in molesting children. Defendant has distributed voluminous quantities of child pornography over the internet to other child molesters and pornographers, including images of the minor boys that defendant has sexually abused. Defendant Costa's advisory guidelines range is 360 months to life imprisonment. Given the totality of these circumstances, the government recommends **360 months imprisonment**.

Defendant John Dougal is also a sexual predator with a long history of molesting troubled early to mid-teen boys. His modus operandi is to gain the child's trust with his friendly, unassuming and caring demeanor. Dougal's documented sexual history includes at least three other minor male victims, whom he also made available co-defendant Costa so that Costa could sexually abuse the boys as well. Dougal's advisory guidelines range is 292-365 months imprisonment. Given the instant offense, Dougal's long history of sexually abusing minor boys, and his reprehensible acts of making the same boys available for Costa to also sexually abuse them, the government recommends **330 months imprisonment**.

II. RELEVANT FACTS¹

1. Defendant Costa used the internet to meet RM, a 15 year old male, enticed RM to produce and transmit sexually explicit photos, and arranged to have sex with RM in Medford on March 27, 2010, which Costa videotaped and photographed.

In March 2010, defendant Brian Costa used the internet site “silverdaddies.com” to initiate contact with RM, a 15 year old boy living in Medford, Oregon. “Silverdaddies.com” is an internet site designed to facilitate sexual conversations and contacts between adult males and minor boys. Using the screen name “braincoast,”² Costa engaged RM in sexually explicit chats and e-mails, discussing his desire to engage in sex acts with RM. Excerpts from Costa’s chats and e-mails with RM are attached as **Exhibit 1**.³ For example, during the March 20 chats, Costa tells RM: “i luv ur body and i want your dick so much,” (1-1) “i wish i could explain how much i want your body...and to feel your yummy boy cock,” (1-4) “i’m looking at your dick and cum pic again...damn, daddy needs his boy sooooo bad,” (1-5) “damn, ur a hot boi...suck my cock baby so i can make you my boy,” (1-6) and “i can hardly wait to get my hands on u and my mouth on ur cock and my dick up your ass... i gonna feed u and breed u and make u my boi forever!” (1-10)

Costa sent multiple videos of himself naked in his home, masturbating to ejaculation, to RM (1-24, 4-19), and instructed RM to likewise take sexually explicit photographs of himself and send them to Costa: “i hope you will make it a point to do more pics and vids for me when you get the camera back...cuz really, i could never get enough of you,” (1-6) “can i talk you into another couple phone pics...more cock, perhaps,” (1-8) “can u get totally naked and try to get one

¹ In addition to the sentencing exhibits submitted under seal and the facts in the PSR, the government relies on the facts of record in the Complaint Affidavit and detention hearing exhibits present in M-10-4028.

² An anagram for “Brian Costa.”

³ RM used the screen name “effervesense.”

that shows ur dick and as much of ur body as possible," (1-8) "can u do one more pic to show me ur cum too? Or even more than one...", (1-8) "I'm sitting here jacking off to that last pic! ... awesome pic! I wish you'd done another one of the same thing but lower to show ur cock and balls!...i want to add my cum to your tummy and just coat u totally," (1-9) "Think you could send me a pic of when you cum?" (1-9) "yes, a far one of more body again..but maybe from lower and showing more of your cock, balls and bush," (1-9) "yummm.. I luv that one!... but not as much as i love you for doing all these!" (1-10) "at least i have ur one vid... how many cum vids do u have of mine? ... u should do 2 more for me so we'd be even..." (1-18) As is evident from the chats, RM responded to Costas' numerous requests by taking several sexually explicit photos of himself and transmitting them to Costa (4-37, 4-38).

The chats and e-mails also indicate Costa's desire and plan to meet RM in Medford for a sexual encounter *and take pictures and videos*: "I just got finished jacking off to it, too, and thinking about being with you. I'm thinking I could probably get down there next weekend (not this weekend), so we'll need to chat to make sure that can work.... My cell is 503-936-5019. Thanks again for making my morning!" (1-25) When RM talks about masturbating to Costa's video, Costa suggests "maybe you can do that for me next weekend and i can get it on video." (1-3) During the March 22 chat, Costa says: "cuz obviously i need to be able to trust you completely with all of this too,"(1-16) "so even if we just fondle and stroke each other's cocks for 2 hours, that will be just awesome with me!" (1-16) "I can hardly wait just to feel your body all soaped up in the shower, for starters...", (1-16) "well, with any luck, we'll have 2 hours," (1-17) "I will have to pick you up somewhere..." (1-17) "Well, my cameras will be involved on saturday too..." (1-18) And on March 26, the day before Costa met RM in Medford: "damn, i wish your dick and balls were in my hands right now.... i'm gonna take a lot of pics and vids so i can at least

have some way of enjoying you between tomorrow and our next visit..." (1-21)

When RM reveals to Costa that RM has never had sex with another male, Costa is delighted. For instance, on March 20, after Costa says he wants to meet RM next weekend, RM says, "Hope I told you that it'd be my first time doing things with a guy,"⁴ and Costa replies, "i think that's awesome... i so want to give you your first orgasm from a guy ;-)" (1-1) On March 22, RM again tells Costa "I haven't ever done things with a guy before," Costa replies "i luv that :-) . . . and when i'm sucking ur balls, u won't care." (1-19)

The chats also reveals Costa's concern about concealing their activities from RM's mother. When Costa suggests spending the entire night together and RM hatches a plan that includes a friend's cooperation, Costa expresses concern: "but i dunno, might be too much of a risk....wouldn't he want to know where you were going to be? lol . . . but i think it would be safer if no one else at all know... at least for this first time anyway." (1-4) When Costa tries to arrange a time for he and RM to "jack off on the phone with each other," Costa inquires "what's the earliest you could do it? ;-) like, right after your mom leaves for work?" (1-11) And in another instance, "maybe we'll get lucky and she'll go to the store tomorrow night or something and leave you home alone." (1-15)

On March 27, 2010, Costa traveled from Portland to Medford in his red BMW convertible and picked up RM. Costa took RM to the Holiday Inn in Central Point where they engaged in sex acts. Costa videotaped the sex acts with his Vado digital video camera, and also took sexually explicit photos of RM with his Nikon Coolpix P50 digital camera. A 28 minute video, later seized from Costa's computer, shows Costa performing oral sex on RM, RM

⁴ RM also revealed that he only had one sexual experience with a girl when he was 12 that he really did not remember too much. (1-1)

performing oral sex on Costa, and Costa and RM masturbating each others' penises (4-37, 4-81, 4-82, 4-90) .

2. Defendant Costa used the internet to arrange a second sexual encounter with RM in Medford on May 5, 2010, and persuaded RM to include defendant Dougal.

After the March 27 sexual encounter, Costa continued communicating with RM through chats and e-mails. In a 4/28/10 chat, Costa asked if RM was interested in meeting a friend, because they might be driving down together. (1-22) Costa explained "he's a vary good friend...we have similar interests ;-) ... we may be able to stay over one night." (1-22) RM asked, "So when (and if) you guys are able to get down here, is it going to be me and you doing things or will it be all of us?" Costa replied, "it's up to whatever everyone wants." RM said "I'm up for whatever, but I just hope that I'd be able to satisfy you both simultaneously if that came to be." (1-22) Costa reassured RM, "no worries... he's very cool... I know you will like each other too." (1-23) Costa then transmitted a photo of Dougal to RM, to which RM replied, "He's handsome...not as handsome as you though." (1-23) In a 5/3/10@07:21 e-mail Costa tells RM, "And the good news is that it looks like John and I will be sleeping over in Medford for sure on Wednesday night... He'd love to meet you too, so just let me know what you think might work." (1-29) Later that day, Costa e-mailed: "John has seen you in pics and thinks you're pretty cool. Course my endorsement has something to do with that. ;) He's cool too, so I know you will like each other just fine. I know we won't get in before 9 or 10, so whatever works best for you at that point or after is fine, as long as there's no way for you to get into trouble." (1-28) RM said he would either sneak out of his house or tell him mom he was at a friend's house (1-29), and that he was a "master of stealth in the secret art of getting out of my house... I'd have my phone with me just in case she did notice. I can't wait to see you both!" (1-28)

On May 5, 2010, Costa and Dougal traveled to Medford in Costa's red BMW, picked up

RM, and took RM to the Medford Holiday Inn where they engaged in sex acts with RM. Both Costa and Dougal took photos of the others' sex acts with RM. Photographs seized later from Costa's computer and camera showed Dougal and RM naked on the hotel bed with Dougal inserting an object into RM's anus, Dougal's face contacting RM's buttock, Dougal spreading RM's buttock, and RM laying naked on the bed, penis erect, with Costa lying naked on top of RM. (4-37, 4-90, 4-123).

3. RM's mother called the police, who interview RM and search Costa and Dougal's residences.

A few days after Costa and Dougal's May 5 sex acts with RM, RM's mother found out about the sexual encounters and contacted police. Police interviewed RM, who admitted both sexual encounters with Costa and Dougal. Police examined RM's computer, which contained the videos Costa masturbating to ejaculation, photos of RM masturbating, and photos of Dougal clothed. RM's phone contained numbers for both Costa and Dougal.

a) Police search Costa's house and seize cameras and computers.

On May 20, 2010, police executed a search warrant at Costa's house, 6840 SW Canyon Terrace, in Portland, Oregon. Costa's home office contained an internet connection with two computers and multiple storage devices. A Nikon digital camera and Vado video camera were on Costa's desk. Costa's computers contained the photographs of RM posing nude and masturbating, which Costa had previously instructed RM to produce and transmit to Costa over the internet; a 28 minute video and photographs of Costa's March 27 sex acts with RM; photographs of Costa and Dougal's May 5 sex acts with RM; and hundreds, if not thousands, of images and videos of child pornography, including images of other boys that Costa and Dougal had sexually abused. Chats and e-mails also revealed Costa other minors in sexually explicit conversations and sending voluminous amounts of child pornography, *including a photo of RM*

masturbating, to other child molesters and child pornographers.

b) Search and interview of John Dougal

Police also executed a search warrant and interviewed John Dougal (Exhibit 3) at his house, 4319 North Borthwick, Portland, Oregon. Dougal admitted the May 5 sex acts with RM, which included oral sex with RM and digital penetration of RM's anus (3-35, 3-36). Dougal said it was all consensual, that Costa was also there, and that both he and Costa took photos of the event to remember it, because "This is a whole new adventure. It kind of was far more than I expected."⁵ (3-37). They took RM back home that night because RM had school the next day.

Dougal was vague about how he was brought into May 5th sexual encounter with RM, but acknowledged he knew through Costa that RM "wants to hook up. He wants to get together is my understanding, ...and I'd like to meet him." (3-12) Dougal said he knew RM "...seemed cool. That he was interested in older guys. Ah, that he and Brian had been talking." (3-12) Dougal said Costa had sent Dougal a picture of RM, then said he did not remember for sure (3-19), but that Costa must have shared photos of RM (3-25), and that Costa told Dougal about RM. Regarding RM's age, Dougal initially said, "I'd say 18," but then said "I don't think I asked. I don't think he said.... I thought he was young." (3-12) Later Dougal said that RM was a sophomore or junior in high school (3-34), and thus would have been 16 (3-45). Dougal said that he and RM continued communicating after their May 5th sexual encounter, that they said they loved each other, and that "I cared deeply for him." (3-34)

Dougal denied being involved in situations like this in the past (3-41, 3-45). When confronted with a 2000 incident where he propositioned a 12 year old boy for oral sex at a public

⁵ This is clearly a lie, because as noted below, Dougal and Costa together had sexually abused at least three other minor males, ages 9 to 15, and it was Dougal who made these children available for Costa to also sexually molest.

pool (Exhibit 9), Dougal explained that his body sometimes acted in ways he cannot control due to a spinal injury, but that nothing happened (3-41). Dougal admitted that when he was in his 20s, he probably engaged in sex acts with persons who were “borderline” age-wise (3-46). When Agent Gray mentioned it appeared that Costa “has been involved in this for quite some time,” Dougal said he did not know, but that Costa had mentioned a kid named TB,⁶ and that Dougal “connected” and “played” with TB years later when TB was an adult (3-42).

Dougal’s computer also contained photos and videos of child pornography.

4. Evidence of child exploitation found on Costa’s computers.

a) Videos and photos from Costa’s March 27 sexual abuse of RM and Costa and Dougal’s May 5, 2010 sexual abuse of RM

The forensic examination of Costa’s computers and digital cameras contained the photos and videos Costa and Dougal took of their sex acts with RM on March 27 and May 5. These included the 28 minute video of Costa and RM engaging in oral sex and mutual masturbation on March 27, photos of RM nude with erect penis, and photos of both Dougal and Costa engaged in sex acts with RM on May 5 (4-37, 4-38, 4-81, 4-82, 4-90, 4-91, 4-123). Costa’s computers also contained sexually explicit photos that RM took of himself and sent to Costa (4-37, 4-38).

b) Costa distributed hundreds, if not thousands, of child pornographic images via chats and e-mails.

Costa’s computers and e-mail accounts also reveal that Costa was extensively involved in distributing hundreds, if not thousands of images of child pornography over the internet, and that both Costa and Dougal had sexually abused several other minor boys over the past ten years. For instance, On March 18, 2010, at 00:18 am, Costa e-mailed "nausinger88@yahoo.com" under

⁶ Costa began sexual abuse of TB began when TB was 15 years old. The details are discussed below.

the subject "andrew pics," and attached 20 images which included a prepubescent boy masturbating, posing with legs spread and erect penis, holding and rubbing an adult penis, an adult penis penetrating a child's anus, and an adult licking a small child's penis (Count 8; see Complaint Affidavit, paragraph 46). On April 29, 2010, at 12:26 am, Costa e-mailed "nausinger88@yahoo.com" under the subject "more sweetness" and attached six images, all depicting children being sexually exploited, including a minor male posing with legs spread and an erect penis, a naked adult male sitting on a bed with legs spread and erect penis holding a naked prepubescent male child (naked from the waist down) on his lap, also with legs spread, and a naked prepubescent male child performing oral sex on an adult male (Count 9; see Complaint Affidavit, paragraph 47). On April 25, 2010, at 12:51 am, Costa e-mailed "darcytrett@gmail.com" and attached two photographs showing RM standing naked outside of a shower/bath giving the two "thumbs up" sign, and showing RM posing naked on a bed with his legs spread and erect penis (Count 7; see Complaint Affidavit, paragraph 48). These are the same photographs taken with Costa's Nikon Coolpix P50 camera at the Central Point Holiday Inn Express on March 27, 2010 (4-37).

In several instances, Costa also chatted with other minors and expressed his desire to sexually molest these minors, and sometimes falsely claiming that he was much younger (2-26, 4-59 to 4-61).

Costa also bragged about having sex with young boys and transmitted sexually explicit photos and videos of his conquests (2-1, 2-2, 2-5, 2-6, 2-21, 2-22, 2-24, 2-33, 2-36, 2-40, 4-61 to 4-63, 4-66). For example, in a 2004 chat with "Jason," Costa bragged that he and "and my friend john" sexually molesting 10 year old DL, and that "sometimes john use to drink [DL's] pee...since he was too young to cum...did i ever show u a picture of that?" (2-2) In a 2004 chat

with “E Z Does It,” Costa describe how he and a friend molested a 9 year old boy over a couple of years: “most times it was a buddy of mine too and all 3 of us played...yeah it was awesome...i luvd his sweet little dick and balls...i miss tasting him...my friend use to drink hi pee too..he use to luv peeing in my bud’s mouth.” (2-5) In a 2005 chat with “Just Me” Costa described “my last 12 [year old] was with a buddy of mine doing him together...my buddy knew him first, we all spent time together, one thing led to another....” (2-22). In a 2006 chat with “Mike,” who was also interested in finding a young boy to molest, Costa affirmed that Costa was also interested in 12 to 15 year old boys (2-32). Mike asked “so how do you get boys?” Costa replied, “just thru other boys...yep, that’s why u need to come here so we can do them together hehehe.” (2-40) When Mike said he wanted a 14 year old boy, Costa replied that he might have someone in mind (2-40), and “i would luv to luv a boi with you sometime, would be awesome.” (2-43)

The evidence mentioned above is only a small fraction of what was contained on Costa’s computers; the amount of evidence was so overwhelming that the forensic examiner was not able to analyze it all (4-142).

c) Photos of other minor victims sexually abused by both Costa and Dougal.

Costa’s computers also contained sexually explicit photos the children he bragged about sexually molesting, some with Dougal. FBI Agent Jeff Gray was able to identify and interview some of these child victims, ages 9 to 15. Three of the children (now adults) reported being sexually molested first by Dougal, and then made available to Costa by Dougal. Their compelling stories are detailed below.

5. Other child victims sexually abused by Costa and Dougal.

Based upon photos from Costa’s computer and previous police reports, law enforcement located four other child victims who were sexually abused by Costa and/or Dougal, three of which

Costa and Dougal sexually abused together.

a) Costa sexually abused 15 year old TB in 1991.

In March 1991, TB, a 15 year old boy, reported that he was anally penetrated by Costa (Exhibit 5). TB called his neighbor, crying, saying his mother was out of town, that something had happened between TB and Costa, and TB was afraid of getting AIDS. After the neighbor calmed TB down, she was so angry that she called Costa and confronted him. Costa said “I love him,” started to cry, and said several time that he should not have done it. Costa also said “[TB] said no, but he really didn’t mean it,” and that kids need sex just as much as adults. Costa said the world was unfair, threatened to kill himself, begged the neighbor not to call the police, and promised never to contact TB again. The neighbor suspected that Costa was interested in young boys and recalled that her roommate’s 11 year old son previously reported that when Costa tucked him in bed he would touch him in strange ways and kiss him a lot.

An officer contacted TB, who said that his mom was out of town that weekend when Costa came over to visit. Costa has always “played around” with TB in a kidding way, but this time Costa would not stop. TB told Costa to stop and leave, but Costa refused. TB finally gave in to Costa’s demands. Costa kissed and touched TB all over TB’s body, and instructed TB to touch and feel Costa’s penis. Costa anally penetrated TB until Costa was “completely satisfied.” TB then demanded that Costa leave and threatened to call the police if Costa ever returned.

FBI Agent Gray interviewed TB, now 26 years old (5-5). TB said he came from a dysfunctional family and tried to spend as much time away from home as possible. TB met Costa through his neighbor and felt Costa was a good adult male influence. As a result of Costa’s sexual abuse, TB attempted suicide on several occasions. Costa’s computer contained photos of TB engaged in sex acts with Costa, Dougal, and others apparently after TB reached adulthood (4-

52, 4-53). Dougal also mentioned TB as a “kid” that Costa may have been sexually involved with, and who Dougal later “connected with” when TR was an adult (3-42, 3-43). TB did not recall the exact circumstances under which Costa recontacted TB after sodomizing him, but recalls receiving telephone calls from Costa in which Costa would say that he loved TB. TB said Costa was very manipulative.

TR submitted a statement for the court to consider at sentencing (10-2 to 10-4). TB described how he met Costa when he was 14 years old, how he was in need of a good role model, and how Costa raped him one day when his mother was away, despite his protests. Costa would repeatedly return to sexually abuse TB and send TB pictures of the abuse. As a result, TB attempted suicide several times between ages 14 and 20. TB is still in therapy for anxiety, depression, and panic attacks.

b) Costa and Dougal sexually abused 9 year old DL beginning approximately 1999.

Agent Gray interviewed RL and DL after their photos were found in Dougal’s house and on Costa’s computer. Two photos on Costa’s computer depicted a youthful DL (approximately age 9) with his pants down, exposing his penis to the camera (6-20, 6-21). Agent Gray contacted and interviewed DL (Exhibit 6-11), who is now 20 years old. DL said he was 9 or 10 when he first met John Dougal. DL’s family was moving to a smaller residence and could not take their dog Harley, so DL and his older brother RL stood outside the local market with Harley, asking passers by if they would adopt Harley. DL said it was a very sad time. Dougal came by and expressed an interest in Harley. They went back to DL’s house and met DL’s mother. Dougal assured them he would take good care of Harley and that the boys could visit any time because Dougal lived close by. After a couple days, the boys visited Dougal’s house. At first, they just played with Harley. After a week, Dougal took the boys and their mother out on his fishing boat.

As the boys' visits to Dougal's house became more frequent, Dougal would hug and put his arms around DL. Once, when DL was alone with Dougal, Dougal put his hands down DL's pants and fondled DL's penis. They then went into Dougal's bedroom, where Dougal undid DL's pants, exposed DL's penis, and began stroking it. DL asked Dougal to stop, and Dougal complied, assuring DL that everything was okay. This happened again a couple days later, where Dougal lowered DL's pants and fondled DL's penis. On another occasion Dougal dropped his own pants exposing his penis to DL, and wanted DL to touch it, but DL refused. There were approximately five occasions where Dougal fondled DL's penis, all at Dougal's house, and Dougal performed oral sex on DL either the fourth or fifth occasion. Dougal only made sexual advances on DL when RL was not there.

Dougal introduced DL to Brian Costa within a couple months. DL recalled one incident where Costa and Dougal were in Dougal's bedroom, naked on the bed engaging in sexual activity. Both wanted DL to join, but DL declined. On occasion, when DL spent the night at Dougal's house, he would wake up with his pants undone but could not remember if anything had happened. Dougal would also fondle DL's penis while they slept on camping trips. DL said he last had sexual contact with Dougal when he was 13 or 14 years old, about the time DL was sent to foster care. DL did not recall actually urinating in Dougal's mouth, but it could have happened accidentally when Dougal was performing oral sex on DL.

Agent Gray interviewed DL's mother, WA (Exhibit 6-1). WA became high emotional saying "I knew it!" She had always suspected Dougal had molested her sons. WA said she was a single mother, and that in approximately 1999, when DL and RL were approximately 9 and 12, the boys met Dougal at the neighborhood market while posting a flyer of their dog Harley for adoption. Dougal lived nearby, agreed to adopt Harley, and said the boys could visit Harley

whenever they liked. WA appreciated the boys spending time with Dougal because the boys needed a father figure. WA also thought Dougal was employed as a school mentor. The boys spent time with Dougal on overnight visits, camping trips, and bike rides. WA recalled an incident when Dillon was still young and angry with WA, making a comment to the effect “you’re always letting me get raped.” When RL was 16, he ran away and was gone two weeks. When he came back he said he had been watching Brian’s house, whom Dougal had introduced to WA. But whenever WA asked RL and DL if Dougal had done anything inappropriate, both denied anything had happened.

Although DL did not disclose any sex acts with Costa, information from Costa’s computer indicated that DL was sexually abused by both Costa and Dougal. Costa’s computer contained photos of DL and his brother RL (6-20 to 6-22). Two photos showed a youthful DL with his pants down, exposing his penis (6-20, 6-21). One of these photos was verified as being taken in Dougal’s bedroom from the items on the night stand (6-21). In an 8/21/04 chat with “Jason,” another child molester, Costa sent Jason at least one photo of DL with his pants down and legs spread, exposing DL’s penis: “2a~2.jpg.” (6-16, 6-20) Costa tells Jason that “just looking at his pics has given me a total hard on... doesn’t he make u wanna lick him?” Costa tells Jason that DL was 10 at the time of the picture and 12 now, and “is that perfect or what...” Four days later, in another chat with Jason, Costa remarked, “... i hope [DL] comes back someday so maybe we could all play someday too...” Costa indicated DL was his younger friend that he sent pictures of the last time, and bragged “did I ever tell u that my friend john and I both played with him a few times... and that john use to drink [DL’s] pee ...since he was too young to cum ... yeah [DL] use to think that was way fun ;) ... did i ever show u a pic of that?” (6-17)

Also, in a separate 9/13/04 chat with “EZ Doez It,” Costa apparently transmitted several

sexually explicit pictures of DL saying they were “pics of a boy i shot...from when he was 9 to about 11...we played a few times over a couple years...most times it was a buddy of mine too and all 3 of us played...yeah it was awesome...(sends photo) that’s the first fun pic I ever shot of him...when he was 9...i luvd his sweet little dick and balls..i miss tasting him...my friend used to drink his pee too..he used to luv peeing in my bud’s mouth.” (2-5, 6-19) Costa sends several other pics and comments, “so u like my buddy sucking on our boy’s dick, eh?...so do i..just looking at the pics again is making me hard... that’s my buddy’s dick on top of his...do u want to see any more pics of my boy?...that’s my buddy’s dick on his again...r they still making u hard?... awesome... any chance i can see one of ur boys?... he luvd putting his legs up so we could finger his hole...wel, and lick his balls and his dick too...I wish my pics were better quality...back then it was just polaroid b4 I got my digicam....” (2-6). And in a separate chat with “Mike,” Costa talks about DL and his brother RL (2-28), when Mike says he has seen pics of “you with jon at least,” Costa responds “*and I think [DL] too.*” (2-36) These chats show that Costa took several more pictures of he and Dougal sexually abusing DL.⁷

c) Costa and Dougal sexually abused 15 year old MC beginning in 1998.

Costa’s computer also contained sexually explicit photos of another 15 year old boy, MC, taken in Dougal’s house. Agent Gray located and interviewed MC, now 27 years old (Ex. 7-1). MC said he was 15 years old when he first met John Dougal (approximately 1998). MC’s home life was non-existent; his single mother was involved in drugs and never home. MC was showering in the locker room at a public pool. Dougal was also in the shower, excessively soaping his penis. MC got dressed and went to get his bike from the bike rack. Dougal also had a

⁷ The amount of data located on Costa’s computers was so overwhelming that the forensic examination only covered a fraction of the evidence found on the devices (4-142).

bike and struck up a conversation with MC as they rode away from the pool. When they reached MC's street, the conversation turned sexual. They ended up going to a park near MC's house after dark, where Dougal gave MC a "blow job" and licked MC's anus, calling it a "rim job." MC had not been sexually active until then and had never engaged in homosexual activity. Dougal also talked about fishing and offered to take MC fishing in his boat. They exchanged phone numbers. Dougal took MC on other excursions and offered to teach MC how to drive. Dougal said he was involved in the Big Brother program.

Shortly thereafter, Dougal took MC to a beach house in Washington, just across the Oregon border, where Dougal introduced MC to Brian Costa. They rode on the beach in Dougal's truck, with MC sitting on Costa's lap. MC could feel Costa's erection as Costa groped MC's groin. When they returned to the beach house, Costa and Dougal drank wine, took off their clothes, and then started taking off MC's clothes. Costa and Dougal kissed MC and performed oral sex on MC. Costa also had MC perform oral sex on Costa. MC woke up the next morning with Dougal performing oral sex on him and Costa's penis entering MC's rectum. Costa gave MC his phone numbers and said to call if MC ever needed help.

MC later ran into Costa, who provided MC with groceries and money. MC engaged in sex acts with Costa at Costa's house at least five times during their first year, and at least twice with Dougal at Dougal's residence. On one occasion, Costa had to stop by Dougal's house, they went inside, and Costa and Dougal shaved MC's pubic hair. MC was sexually involved with Costa for a few years. Later in their relationship, MC realized that whenever Costa gave MC money or assistance, Costa expected MC to repay the gesture with sex acts.

When MC was 16, he went on a camping trip with Dougal and a couple with a 16 year old son. When Dougal, MC, and the 16 year old were out in the boat, MC saw Dougal fondle the boy

through his clothing. Dougal later told MC not to say anything or the boy's parents would kill Dougal.

MC attended school through the 10th grade. He attended an alternative program but never graduated or obtained his GED. He has had problems with using methamphetamine, Ritalin, and alcohol, and has been arrested for Possession of a Controlled Substance and theft. To this day, MC wonders if his sexual encounter with Dougal caused him to become homosexual.

Costa's computer contained several photos of a youthful MC naked and in sexually explicit positions (7-12 to 7-15). Two photos were identified as taken in Dougal's house (7- 12, 7-15). Another photo depicted MC and another juvenile male, JM (also sexually abused by Costa and Dougal), nude in Dougal's shower (8-11).

d) Costa and Dougal sexually abused 12 year old JM beginning in 1998.

Costa's computer also contained nude photos of 12 year old JM, taken in Dougal's house (Exhibit 8-10 to 8-12). Agent Gray identified and interviewed JM, now 25 years old (8-1). JM was about 12 years old when he first met John Dougal and Brian Costa (approximately 1998). JM was having no success meeting girls online, and finally acquiesced to a guy named "M---" because he was curious about his own sexuality. JM hung out with MC and smoked marijuana. MC took JM to Dougal's house. Costa was there as well, and JM was pretty sure that they engaged in sex acts at that time. JM confirmed that he engaged in anal sex, oral sex, and masturbation with Costa. Dougal's physical condition limited the sex to Dougal performing oral sex on JM. Costa videotaped and photographed many of their sexual encounters. Dougal also took pictures of their sex acts but not to the extent that Costa did. Costa frequently asked JM to engage in three-way sex acts with MC or TB. JM had sexual encounters with Costa and Dougal at both Costa's house and Dougal's house. JM identified himself in photos taken from Costa's computer. These photos

show JM performing oral sex on Costa at Costa's house when JM was 15 or 16, Dougal and JM naked with Dougal about to perform oral sex on JM in Costa's house when JM was about 15 years old, JM naked with MC in Dougal's shower, JM and Costa naked in Dougal's house. Dougal was a friend and would give JM money to buy food.

JM never told his family about his sexual encounters with Costa. However, JM's older brother once eavesdropped on a telephone conversation between JM and Costa, where they talked about shaving their pubic hair. JM's brother demanded to know Costa's identity, and beat JM when JM refused to tell.

Costa's computer contained several sexually explicit photos depicting JM naked in *Dougal's* house (8-10 to 8-12); JM thought he was about 14 or 15 years old at the time. One photo depicts Costa and JM naked together (8-10), while another photo depicts JM and MC naked in Dougal's bathroom (8-11); JM thought he was 13 or 14 at the time. In an 8/8/04 chat with "DAVID," Costa transmitted several photos of JM, including "IMAGE 18c.jpg" (apparently created on 6/3/04) which depicts JM performing oral sex on Costa (8-7). Costa tells "DAVID" that JM is 17 but looks younger. Costa also says "I've know him since he was 13...i think the first time we did anything he was 14...but then when he was 15 we started doing more... and he lived with me for a bit when he was 16...yep, what can I say?" (8-8) In a separate chat with "Mike," Costa acknowledged knowing JM from age "13 onward." (2-31) Costa acknowledged that he still has sex with jon, and that the photos are "from about 4 years ago," and that jon is now 19 years old (2-36, 2-37).

Dougal's also computer contained photos JM naked in Dougal's shower (8-14), but a date stamp on one photo (2006) would make JM 19 years old. Dougal's cell phone also contained a phone number for JM.

e) Dougal propositioned 11 year old AN for sex in 2000.

Police reports show that in 2000, John Dougal propositioned 11 year old AN for oral sex at a public swimming pool in Portland (Exhibit 9). AN reported that he was at the pool with his younger brother, and Dougal was swimming nearby. When AN mentioned that he was hungry, Dougal said he had some money in the locker room. They went to the locker room together, and Dougal told AN that if he wanted the money he would have to do a sex act with Dougal. AN refused, left the locker room, and reported the incident to the lifeguard. Dougal had left by the time police arrived. Police contacted Dougal a week later when he returned to the pool. Dougal denied the entire incident and any contact with a child, and explained that sometimes he gets spontaneous erections in the shower or locker room that he cannot control. FBI Agent Gray recently interviewed AN, who again identified Dougal and reaffirmed the incident (9-6). AN said it was clear to him that Dougal was interested in a sex because Dougal grabbed his crotch and said words to the effect of, "if you suck me, I'll suck you." (9-7)

III. SENTENCING GUIDELINES ANALYSIS

The government recommends the following sentencing guidelines analysis:

1. Brian Costa

COUNT 3: ENTICING A MINOR TO ENGAGE IN UNLAWFUL SEX ACT

Cross- Reference 2G1.3(c)(1): because this offense involved causing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Production of Child Pornography): **ADJUSTED OFFENSE LEVEL = 45**

COUNT 4: PRODUCING CHILD PORNOGRAPHY, 18 USC 2251(a)

Base Offense Level, § 2G2.1	32
Victim less than 16 years, (b)(1)	+2
Sexual act, (b)(2)	+2
Involved distribution, (b)(3)	+2
Use of computer to solicit, (b)(6)	+2
Pattern of sex abuse, 4B1.5(b)	+5

ADJUSTED OFFENSE LEVEL = 45

COUNT 8: MAILING CHILD PORNOGRAPHY, 18 USC 2252A(a)(1)

Base Offense Level, § 2G2.2	22
Prepubescent minor, (b)(2)	+2
Distribution for value, (b)(3)(B)	+5
Sadistic conduct, (b)(4)	+4
Pattern of sexual abuse, (b)(5)	+5
Use of computer, (b)(6)	+2
600+ images, (b)(7)(D)	<u>+5</u>
ADJUSTED OFFENSE LEVEL = 45	

Alternatively, Cross- Reference 2G2.2(c)(1): because this offense involved causing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Production of Child Pornography): **ADJUSTED OFFENSE LEVEL = 45**

GROUPING, § 3D1.3	45
Acceptance of Responsibility, § 3E1.1	<u>-3</u>
TOTAL OFFENSE LEVEL = 42	

Costa's Criminal History Category is I, resulting in an advisory guidelines range of **360 months to life imprisonment**. The government recommends the low-end sentence of 360 months imprisonment.

2. John Dougal

Base Offense Level, § 2G2.1	32
Victim less than 16 years, (b)(1)	+2
Sexual act, (b)(2)(A)	+2
Use of computer to solicit, (b)(6)	+2
Pattern of sex abuse, 4B1.5(b)	+5
Acceptance of Responsibility, 3e1.1	<u>-3</u>
ADJUSTED OFFENSE LEVEL = 40	

Defendant Dougal's Criminal History Category is I, resulting in an advisory guidelines range of **292-365 months imprisonment**. The government recommends the mid-range of **330 months imprisonment**.

3. The two-level increase for a victim under 16 years under § 2G2.1(b)(1)(B) applies to both Costa and Dougal.

§ 2G2.1(b)(1)(B) provides a two level increase if the victim has "not attained the age of

sixteen years.” In this case, there is no dispute that the victim, RM, was 15 years old, thus the two level enhancement applies. Defendant Dougal claims this enhancement should not apply simply because when asked how old he thought RM was, Dougal answered, “Well if he was a sophomore or junior in high school then 16.”⁸ However, § 2G2.1(b)(1)(B) has no knowledge requirement, but is based only upon the victim’s actual age. Defendant Dougal certainly knew RM was a minor, and videotaping any minor’s sex acts is a crime. That RM was under 16 simply subjects defendant to a more severe penalty under the guidelines. Cf. United States v. Taylor, 239 F.3d 994 (9th Cir. 2001) (conviction for transporting a minor for prostitution does not require proof that defendant knew victim was a minor; transporting any person for prostitution is already a crime, and the victim’s age simply subjects the defendant to a more severe penalty).

4. The two-level enhancement for use of a computer under §2G2.1(6)(B) applies to both Costa and Dougal.

§2G2.1(6)(B) provides a two level enhancement if, for the purpose of producing sexually explicit material, the offense involved the use of a computer to persuade, induce, or entice a minor to engage in sexually explicit conduct or to otherwise solicit participation by a minor in such conduct. This enhancement applies to Dougal even though he personally did not communicate with RM by computer. USSG § 1B1.3(a)(1)(B) holds defendant Dougal accountable for all reasonably foreseeable acts of others in furtherance of the jointly undertaken activity.

In this case, defendant Costa used his computer to arrange the second sexual encounter with RM and persuade RM to involve defendant Dougal. Costa’s 4/28/10 chat asks RM if RM would be interested in meeting a friend with “similar interests” as Costa, and RM gives Costa permission to show Dougal photos of RM (1-22). Costa and RM also discuss having group sex,

⁸ Defendant Dougal also falsely claimed that this was the first time he had ever been sexually involved with someone this young.

and Costa tells RM not to worry because Dougal is “very cool...i know u will like each other too (1-22, 1-23). Costa also sends RM a picture of Dougal (1-23). In a 5/3/10@07:21 e-mail to RM, Costas says “And the good news is that it looks like John and I will be sleeping over in Medford for sure on Wednesday night... He’d love to meet you too, so just let me know what you think might work.” (1-29). Then at 11:31 pm Costa e-mailed: “John has seen you in pics and thinks you’re pretty cool. Course my endorsement has something to do with that. ;) He’s cool too, so I know you will like each other just fine. I know we won’t get in before 9 or 10, so whatever works best for you at that point or after is fine, as long as there’s no way for you to get into trouble.” (1-28) This correspondence shows that Costa was consulting with Dougal about meeting RM as early as 4/28/10, a week before their sexual encounter on May 5. Costa sends RM a photo of Dougal, and shows Dougal a photo of RM. Given that RM lives in Medford, it was reasonably foreseeable to Dougal that Costa was arranging their sexual encounter with RM using the internet. And given the lengthy history between Costa and Dougal of abusing other minor males and photographing their sexual activities, it was reasonably foreseeable to Dougal that they would be photographing their sexual activities with RM as well.

5. The five level enhancement for Pattern of Sex Abuse, 4B1.5(b) applies to both defendants.

USSG 4B1.5(b)(1) provides that if the defendant “engaged in a pattern of activity involving prohibited sexual conduct . . . the offense level shall be **5** plus the offense level determined under Chapters Two and Three.” “Prohibited sexual conduct” includes sexual acts with persons under 16 years old. Application Note 4(A); 18 U.S.C. § 2426(b)(1); 18 U.S.C. § 2243 (Ch. 109A). “Pattern of activity” means that the defendant engaged in prohibited sexual conduct with a minor on at least two separate occasions, regardless of whether the occasion occurred during the instant offense or resulted in a conviction. Application Note 4(B).

In this case, defendant Costa engaged in prohibited sexual conduct with RM on two occasions, and sexually victimized at least four other minor boys (TB, MC, JM, and DL) a multitude of times. Defendant Dougal also engaged in prohibited sexual conduct with RM once, and sexually victimized at least three other minor boys (MC, JM, and DL) on several occasions. Thus, there is no question that the 5 level enhancement for engaging in a pattern of prohibited sexual activity applies to both defendants.

IV. VICTIM IMPACTS

Several victims have submitted impact statements (Exhibit 10). The mother of RM, the 15 year old child in the instant case, expressed her rage at Costa and Dougal targeting her son (10-1):

“As a parent when I was told about these monsters it felt like I was physically hit with a 100 pound sledge hammer! As a parent it is extremely hard to wrap my mind around the fact that a pedophile has been taking my child to hotels for sex acts .. I love my child, he is my heart and soul! I felt and still feel rage and fury.... It is not ok for a 52 year old man and his 42 year old friend to have ANY contact with my 15 year old child! I'm still so devastated AND furious! These men had my child convinced I would throw him out on the streets if I ever learned about this! I am so angry! How do you sleep at night being what you are? I believe pedophiles can never be rehabilitated. Therefore, if sentencing was up to me it would be the death penalty ... no appeals, just carried out immediately. This has had a profound negative impact on my son and he's internalized all of this.”

TB, who Costa repeatedly sexually abused at age 15, explained his continued suffering and asks that the Court hold Costa accountable (10-3, 10-4):

“I'm pleading with the court that Mr. Costa be held accountable for his crimes against me and his countless other victims. I have been sentenced to a life of fear, anxiety, and the inability to trust which has also exacerbated a chronic medical health condition from which I suffer. He does not deserve to be free to prey on the weak. This man thrives on watching people suffer. He gets his strength and power from feeding off the vulnerable. He uses and manipulates you until you feel worthless and don't want to live anymore.

I cannot tell you why he chose to follow me from the time I was a young man until I was well into my twenties, but I can tell you he has completely destroyed my ability to interact normally with people. I am so scared and anxious about seeing him that it is impossible for me to address the court in person. The thought of seeing him

makes me physically ill. My health is fragile enough without this added stress.

I know I am not the only life he has irrevocably damaged. He is an evil monster, and I beg the court to never let him ever see the outside of a jail cell again. Stop him from raping, intimidating, and overpowering the minds and bodies of young men. Our lives will never, ever be the same again. Our dreams are filled with the nightmares and screams from living with the fear and pain caused by that man.

This man got away with what he did to me, even though it was reported once. The failure of the system enabled him to sexually abusing children and adolescents for two more decades without consequence or remorse. He has effectively terrorized me and other innocent children, and his crimes have shamefully escaped police and social services interventions. His decades of abuse and torture of boys like me speaks directly to his level of risk to re-offend, and warrants the highest levels of intervention.

He had no right to do this, EVER to anyone. He made us feel that we were to blame, and to have promoted that thinking is nothing short of heinous.”

RL, the older brother of DL, who Dougal and Costa abused at age 9, and whose dog

Dougal adopted, wrote about the impact Dougal’s abuse has had on their family (10-5):

I feel the impact of this crime is greater than people think. Not only does this impact the victims, it affects our families as well. I fell shame for letting this happen not only to me, but to my brother as well. I think taking advantage of young people in a very poor situation is just wrong. Not only did I trust these men, my mother did as well.

The government is making arrangements for some of the victims to be present at sentencing to address the court.

V. GOVERNMENT’S RECOMMENDATIONS

1. BRIAN JAMES COSTA: 360 months imprisonment

Defendant Brian Costa is a child molester with a 20 year history of sexually abusing young boys, first documented in 1991 with his sodomy of TB. He was very effective in persuading minor boys to take sexually explicit photos of themselves to send to him, as well as grooming and enticing minors to have sex with him, using the psychology of friendship and caring. His proven ability to groom these minors and meet them secretly is the main reason why

he has been able to molest so many boys for so long without getting caught. The four child victims that the government has been able to identify all came from broken or dysfunctional homes. Their lives have been forever damaged simply because they had the misfortune of adapting defendant as a father figure. Little did they know that Costa would photograph them and distribute the photos to other child molesters, bragging about his conquests.

Evidence seized from Costa's computers also shows his longstanding obsession for producing, collecting, and trading child pornography with other child molesters and pornographers. His internet chats, e-mails and photos show that his acts of child molestation and producing child pornography are not merely opportunistic, but rather the result of deliberate, predatory behavior. His chats and e-mails reveal his obsession with meeting and sexually molesting 9 to 15 year old boys, many with co-defendant Dougal, and documenting his illicit sexual conquests with photos and videos, which he proudly distributed to other child molesters and pornographers. His association with and encouragement of other child molesters, and his non-stop trading in child pornography further reflect his obsession with molesting children.

In face of the overwhelming evidence against him, Costa submitted to a psychological exam and now acknowledges that he at least had sex with TB and with minor boys JM and MC, whom he met through Dougal. He continues to deny having sex with DL, despite his numerous e-mails bragging about having sex with DL in detail, and sending sexually explicit photos of DL to other child molesters. However, Dr. Johnson noted that Costa "minimizes the extent and severity of his sexual acting out" (Johnson Report, p. 4), that he has "low self-revealing tendencies," and that "he was not particularly forthcoming with information and did not acknowledge faults and shortcomings" (p. 10). Costa also blames Dougal for his return to child molesting, claiming he did not consider sexual relations with another minor until approximately

ten years later (after sodomizing TB) when he met John Dougal; it was Dougal's sexual attraction to children that rekindled Mr. Costa's attraction to children as well (p. 8). Costa did not see his behavior as exploiting children because he "cared about them and felt he was looking out for them" (p. 8).

Costa's claim that he thought RM was 18 years old is absurd. In fact, RM admitted to the police that he told Costa early on that he was 15. The sordid details in Costa's chats, along with the photos exchanged, also show that Costa knew RM was well under 18 years old— the references to himself as "daddy" and to RM as "sweet boy," sexy boy, "yummy boy cock," "sweet boy dick," "i so want to give you your first orgasm from a guy," references to RM's mother and how to deceive her, RM being in high school and school activities, and RM sneaking away from home to meet Costa. And if there was any doubt, Costa and Dougal returned to have sex *again* with RM on May 5 *because of RM's youthful age*, not in spite of it. Costa also claims that both his encounters with RM in Medford "was not with the expectation that they engage in sexual activity," but that "one thing led to another" and "things happened." (Johnson Report p. 9) This claim is also absurd. Costa's chats clearly show his main interest was to have sex with RM and videotape it. This is precisely what agents found on Costa's computer— a 28 minute video of their sex acts.

Costa now claims that in hindsight, he sees that molesting minors was harmful to their development, but at the time he cared about them and wanted to be a positive influence in their lives, and after "a lot of soul searching" since his arrest that he realizes he was "so stupid." (Johnson Report, p. 9-10). This disingenuous, self-serving statement truly underscores Costa's selfish, hedonistic, and manipulative thinking, and shows the real danger that he is to society. Costa never explains how his sexual molestation of 9 to 15 year old boys could possibly have

any “positive influence” on their otherwise dismal lives. It does not take any soul searching to understand that his actions forever altered, if not destroyed, the lives of at least four boys.

Dr. Johnson relies on the Static-2002R to report that *statistically*, if Costa is released after he serves a 15 year sentence, his “likely risk to recidivate is *low*.” (P. 12). This is because *except for his long history of sexually deviant behavior*, Costa has no other criminal history, has led an otherwise normal life,⁹ and will be in his 60's if released after 15 years. The fallacy of placing too much weight on this empirical predictor is that, for instance, if the recidivism rate is 5%, the Static-2002R cannot predict whether Costa will be one of the five who reoffend or one of the ninety-five who do not.

Instead, 18 U.S.C. 3553(a) requires the court to consider a multitude of factors. The nature and circumstances of this offense are heinous. Costa used the internet to lure 15 year old RM away from his mother, and stole RM’s innocence for his own and Dougal’s sexual gratification. Costa also photographed and videotaped this sexual conquest, intending to distribute it to others. In the process, Costa alienated RM from his mother, causing her rage, fury, and emotional devastation (10-1). Even now, Costa trivializes his disgusting acts by maintaining that he, and later he and Dougal, never intended to have sex with RM but that “one thing led to another” and “things just happened.” There was no reason for Costa to travel to Medford on March 27 except to have sex with RM and videotape it. It takes no “soul searching” to understand that “it is not ok for a 52 year old man and his 42 year old friend to have ANY contact with my 15 year old child!”

Further, Costa’s history and characteristics of molesting children, producing and

⁹ In fact, at the time of his arrest, Costa was the Director of Community Relations at Tuality Healthcare in Hillsboro, Oregon.

transmitting child pornography, and encouraging other child molesters beckons a lengthy prison sentence. His lack of *other* criminal history is of little significance given his 20 history of sexually molesting young boys; he simply had not been apprehended until now.¹⁰ His young victims were already vulnerable, coming from broken or dysfunctional families. He seduced them by befriending them, taking care of them, and gradually coaxing them into sexual activity (Johnson report, p. 11). It speaks volumes that Costa's *low-end* guidelines range, which accounts for his lack of criminal history, is 360 months imprisonment. If Costa's only offense was the Medford incidents with RM, then the 15 year mandatory minimum sentence might be appropriate. But given his 20 year history of sexually abusing several other boys, photographing these other conquests, and sharing the photos with other child molesters warrants a sentence far greater than the 15 years for a "first time offender."

A lengthy sentence is critical to reflect the seriousness of Costa's offenses, provide just punishment, and afford adequate deterrence. The seriousness of Costa's offenses goes far beyond a simple sexual tryst that he arranged and photographed with RM. It would promote little respect for the law to treat this as an isolated, one time incident and impose the minimum 15 year sentence, particularly when Costa's low-end guidelines sentence is 360 months, and given his 20 year history of sexually abusing young boys. Just punishment and adequate deterrence are relative concepts, and Costa long history of sexually abusing boys clearly weights heavily on the scales of justice, far heavier than the stereotypic first time

¹⁰ Evidence of other potential crimes chargeable to both Costa and Dougal was found on Costa's computer. Pursuant to the plea agreement, the government will not bring additional charges against Costa or Dougal arising out of this investigation. This includes additional charges of Production of Child Pornography and Distribution of Child Pornography for which there is no statute of limitations. Also, as noted in the SOHTCU Forensic report, only a fraction of the evidence on Costa's computer was examined.

offender.

Finally, a lengthy sentence is necessary to protect the public. Costa's psychological examination underscores his dangerousness to the community. Costa claims it was 15 year old TB that "came on" to Costa in 1991 (p. 7), he blames Dougal for rekindling his sexual interest in young boys (p. 8), he denies sexually molesting DL despite his many boasts to the contrary (p. 8), and he denies that he expected sex when he arranged to secretly meet RM in Medford (p. 9). He rationalizes his deviant acts by claiming he was trying to be a positive influence on the young boys' lives, and only now realizes he was "stupid" (p. 9-10). It is precisely this type of sick rationalization and finger pointing that makes this sexual predatory even more dangerous to the public. Given the totality of these circumstances the court should sentence Brian Costa to **360 months imprisonment**, the low-end of his advisory guidelines range.

2. JOHN AINERD DOUGAL - 330 months imprisonment

Defendant John Dougal is also a sexual predator with a long history of molesting troubled early to mid-teen boys. His modus operandi was to build the child's trust with his friendly, unassuming and caring demeanor. Dougal's documented sexual history includes at least three other child victims, all of whom he introduced to and shared sexually with co-defendant Costa. This includes 9 year old DL (by adopting Harley the dog, Ex. 6), 12 year old JM (through MC, Ex. 8), and 15 year old MC (at a public swimming pool, Ex. 7). Dougal also propositioned an 11 year old boy for sex in a public pool locker room in 2000 (Ex. 9). These were not opportunistic encounters between Dougal and the teen boys. Instead Dougal carefully plotted to groom and cultivate the child's trust to result in a long term sexual relationship with the child for both Dougal and Costa. None of the boys had father figures in their lives, which made them particularly vulnerable to Dougal's and Costa's manipulations. That Dougal would exploit the

particularly sad situation of two young boys (DL and RL) and their single mother having to part with their beloved dog Harley, and use that as an opportunity to groom and sexually molest 9 year old DL, is particularly offensive and disgusting (Exhibit 6).

While Dougal only participated in the second sexual encounter with RM in Medford, it is now clear based upon the evidence uncovered from Costa's computer and resulting victim interviews that Dougal was an equal, *if not greater*, partner with Costa in molesting young boys. It was Dougal that first befriended MC, JM, and DL and then shared them sexually with Costa. Many, if not most, of the sexually explicit photos of these boys were taken in Dougal's house.

Dougal submitted to a psychological evaluation with Dr. Krieg. However, Dr. Krieg's first evaluation was completed without the benefit of statements from other boys that Dougal abused—9 year old DL (Ex. 6), 12 year old JM (Ex. 8), and 15 year old MC (Ex. 7). Dougal only “acknowledged approximately three incidents each with two males and one incident with a third male, all of whom were reportedly teenagers. He had trouble recalling specifics but indicated that the incidents took place in the late 1990s ‘and then it stopped.’” (Krieg Report, p. 14) This investigation clearly shows that Dougal minimized his sexual abuse of the three minor boys. As a result, Dr. Krieg concluded that “the information reviewed for the evaluation indicated that Mr. Dougal's misconduct was opportunistic and not predatory.”

After reviewing the other minor boys statements, Dr. Krieg then concluded that Dougal clearly “engaged in some groom behavior,” and that Dougal should be “ruled out” for pedophilia based upon the ages of DL and JM (8/17/11 report, p. 2). Dr. Krieg admits that this additional information “creates heightened concern regarding the possibility Mr. Dougal is a predatory sex offender,” but speculates that if Dougal is truthful about not molesting any boys for ten years, then he should not be considered a predatory offender (8/17/11 report, p. 2).

In fact, there was nothing opportunistic about Dougal's sexual abuse of RM or any of Dougal's other young victim for that matter. Neither Dougal's psychological report, nor Costa's, discuss the partnership and arrangement that Dougal and Costa had to recruit, groom, and share sex with the young boys between them. Dougal admitted that he and Costa had "been friends forever" and "have a lot of common interests." (3-4) Costa blames Dougal for rekindling his sexual interest in young boys, and said that over the past ten years he has been to Dougal's house on multiple occasions when male children and adolescents were present (Johnson Report, p. 8). Given their partnership, Dougal's sexual abuse of RM did not happen by chance, but rather was planned by both he and Costa. Dougal's admitted that after the May 5 sexual encounter, Dougal continued talking with RM about school (3-33), RM "kept saying the German I love you, and I ended up saying it back. And this was, 'cause I did care deeply for him, to say that it, it was probably a different experience, I'm sure, for him. Just because. Well yeah. I cared deeply for him.... He's a cool kid." (3-34) This indicates that Dougal continued his contact with RM, exchanged words of love with the 15 year old, and thus continuing the grooming process. There is no doubt that Dougal would have eventually had another sexual encounter with RM had RM's mother not found out.

The nature and circumstances of Dougal's offense is equally as serious as Costa— they were equal partners to sexually abuse 15 year old RM in Medford. In fact, Dougal admitted that he had more sex with RM than Costa (3-22). Dougal's history and characteristics, spanning over ten years, are equally as vile as Costa, and in some sense, worse, since it was Dougal who also groomed MC, JM, and DL for sex and then shared them sexually with Costa. The only possible distinction between them is that Costa took more pictures and traded child pornography over the internet. But according to Costa, it was *Dougal* who took the sexually explicit photos of 9 year

old DL that Costa transmitted over the internet (Johnson Report, p. 8).

Although Dougal has no criminal convictions, he has basically the same documented history of sexually abusing young boys as Costa (except for Costa's 1991 sodomy of TB). As such, concerns about the need for the sentence to reflect the offense seriousness, to promote respect for the law, to provide just punishment, and to protect the public apply equally to Dougal as with Costas.

As with Costa, there are simply no mitigating factors that would warrant a more lenient sentence for John Dougal. At the time of his arrest, Dougal was the Office Manager for the Oregon State Bar Attorney Assistance Program in Portland, Oregon. Like Costa, Dougal has led what appears to be a normal life and was able to conceal for too long his sexual abuse of children. Given the totality of these circumstances the court should sentence John Dougal to **330 months imprisonment**, the mid-range of his advisory guidelines sentence.

VI. CRIMINAL FORFEITURE

Defendant Brian Costa has agreed to criminally forfeit the following property and vehicle that was used to facilitate the crimes of conviction:

1. The residence of Brian James Costa, 6840 SW Canyon Terrace, Portland, Washington County, Oregon, further described as: Lot 13, in First Addition to Benz Park, Washington County, Oregon, as excepting that portion of Lot 13, lying northeasterly of line drawn from a point 72 feet southwesterly from the most easterly corner of said lot on the southeasterly line thereof to a point on the northerly line of said lot, 72 feet southwesterly from the most northerly corner of said lot measured on the northwesterly line thereof.
2. A maroon 2007 BMW 35I convertible sedan, Oregon license 822 DKB, VIN number WBAWL73527PX43095, registered to Brian James Costa, 6840 SW Canyon Terrace, Portland, Oregon.
3. Computer equipment seized, including:
 - 1) Dell Dimension 8300 computer, s/n 4BLMW41
 - 2) Macbook Pro laptop computer, s/n W8644718VWOH
 - 3) Maxtor SATA 3.5" hard drive, s/n Y3MW6N1E

- 4) Seagate 1 TB external hard drive, s/n 2GEVSSZA
- 5) Maxtor external USB hard drive, silver, s/n Y433HP9E
- 6) Buffalo external USB Hard Drive, black, s/n 95504490121402
- 7) 512MB silver SanDisk USB flash drive
- 8) PNY Attache' 2GB USB flash drive, silver/black
- 9) Dell 64 MB USB thumb drive, silver
- 10) Datastick Sport USB thumb drive, black
- 11) "Alfred in the Pacific Northwest" USB thumb drive, white;
- 12) Nikon Coolpix P50 digital camera, black, s/n: 35009360
- 13) Creative Vado HD digital video camera;
- 14) CD-R labeled "sean cody-01"; and
- 15) CD-R labeled "Uerin."
- 16) XPC Desktop Computer, s/n SD39P20000712F0027
- 17) Sony 1GB USB drive
- 18) Western Digital Dard Drive, s/n WM916

The government requests that the court make oral pronouncement of this forfeiture in court and include such forfeiture on the judgment order. The government will move to dismiss the remaining counts against the defendants at sentencing.

Dated this 5th day of December, 2011.

S. AMANDA MARSHALL
United States Attorney

/s/ Douglas W. Fong
Douglas W. Fong
Assistant United States Attorney